

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2019-390-E**

IN RE: Ganymede Solar, LLC,)	
)	
Petitioner,)	GANYMEDE SOLAR, LLC’S
)	RESPONSE IN OPPOSITION TO
Dominion Energy South Carolina,)	MOTION TO COMPEL
Incorporated,)	
Respondent.)	

INTRODUCTION

Ganymede Solar, LLC (“Ganymede”) filed its “Motion for Protective Order” on February 4, 2020. Ganymede also filed its “Objections/Responses” to Dominion Energy¹ South Carolina, Incorporated’s (“Utility”) First Set of Discovery Requests on February 4, 2020. Both Ganymede’s Motion for Protective Order and Objections/Responses are incorporated herein by reference, as if set forth herein verbatim, and both were filed by Ganymede prior to the due date of discovery responses. The Utility’s Motion to Compel, filed with this Commission on February 11, 2020, while acknowledging the existence of Ganymede’s Motion for Protective Order, attempts to ignore the legal effect of Ganymede’s pending Motion.

The S.C. Supreme Court has provided clear guidance to this Commission, based upon the Supreme Court’s decision in an Appeal from this Commission, which Appeal resulted from SCE&G [n/k/a Dominion Energy South Carolina, Incorporated], filing of a Motion for Protective Order to this Commission. Hamm v. SC Public Service Com’n, 439 SE 2d 852 (1994). The Supreme Court’s guidance to this Commission clearly states that a party must initially show good cause by alleging a particularized harm. Ganymede pled a particularized harm in its Motion for Protective Order. Once a party has shown good cause, the party seeking discovery [the Utility] must come forward and show that the information sought is both relevant and necessary. Hamm supra at 854.

Ganymede’s Response in Opposition to the Company’s Motion follows.

¹ The Hamm case cited hereinabove, resulted from the Utility’s predecessor filing a Motion for Protective Order with this Commission. However, when Ganymede sought a Protective Order, the Utility declared in numerous filings that Ganymede should be subject to all manner of draconian sanctions. In other words, according to the Utility, when the Utility files for a Protective Order from this Commission, its filing is appropriate. When another party files a Motion for Protective Order, that Motion is highly inappropriate.

RESPONSE TO MOTION

Ganymede Pled Particularized Harm, (Hamm *supra* at 854)

As required by the Hamm case, described hereinabove, Ganymede pled particularized harm in its Motion for Protective Order on page “3”,

“Ganymede Faces Particularized Harm.

5. This Motion should be granted in that Ganymede will suffer particularized harm, in that Ganymede would otherwise be responding to inappropriate and improper Discovery Requests that will cause an undue burden by expense....”

Ganymede Filed a Motion for Protective Order.

“The allegations of a particularized harm are usually in the form of a motion, either for a protective order or a return to a motion to compel production.” (emphasis supplied), Hamm *supra* at 854. In this case, the allegation of a particularized harm was included in Ganymede’s Motion for Protective Order in paragraph “5” on page “3”. Also, Ganymede’s allegation of particularized harm is repeated herein, “[Ganymede’s Motion for Protective Order] should be granted in that Ganymede will suffer particularized harm, in that Ganymede would otherwise be responding to inappropriate and improper Discovery Requests that will cause an undue burden by expense....”

Party Seeking Discovery Must Come Forward.

As required by the Hamm case, described hereinabove, **the Utility as the party seeking discovery, must, “...come forward and show that the information sought is both relevant and necessary to the case.”** (emphasis supplied), Hamm *supra* at 854.

Accordingly, the Burden is now on the Utility.

Because the Hamm case shifts the burden to the Utility, after the showing of particularized harm by Ganymede in its Motion for Protective Order at paragraph “5” on page “3” and herein, the appropriate next step is a Hearing by this Commission where the Utility, as the party seeking discovery, must come forward and show this Commission that the information sought is both relevant and necessary to the case. Hamm supra at 854.

The Utility asserts that in every one of its discovery requests “DESC requests information related to claims Ganymede has made in its own filings and clearly ‘material relevant to the subject matter involved in the pending proceeding.’” But such blanket assertions are not enough to meet the Utility’s burden, and are belied by the fact that the Utility’s discovery requests include a number of requests – such as requests for “itemized statement of any and all damages You allege You sustained as a result of any act or omission of DESC,” and for “all tax returns for Cypress Creek Renewables” that are irrelevant to the Petition and clearly intended to harass. Furthermore, Ganymede’s Motion for Protective Order is rooted not only in lack of relevance of many requests, but also in their burdensomeness. The Utility must, but has not, shown that these requests are not unreasonably burdensome.

Ganymede Filed a Petition, not a Complaint.

Ganymede did not file a Complaint against the Utility, which is the posture that the Utility seems to address. Factually, **Ganymede filed a Petition to this Commission**, pursuant to Commission Regulation R. 103-825, which states,

“Petitions may be submitted to the Commission **for any relief**, other than for an adjustment of rates and charges, which the Commission is empowered to grant under its statutory authority.” (Emphasis supplied)

Ganymede Sought Relief from this Commission, not the Utility.

Based on the text of Regulation R. 103-825 above, Ganymede submitted a Petition to this Commission for relief from this Commission under the Commission's statutory authority under S.C. Code Ann., Section 58-27-980², as is appropriate under R. 103-825.

Ganymede did not seek Relief from the Utility.

Additionally, the Utility has previously stated its general position that as for requests for variances or modifications to Agreements, the Utility cannot grant any such requests, unless the Utility is in receipt of an Order from this Commission as the Regulatory Agency. Factually, Ganymede's Amended Petition also contained the following on page "5", "...but the relief sought is expressly from this Commission and not DESC...."

CONCLUSION

Based on the foregoing, and in light of (i) the South Carolina Supreme Court's clear guidance in Hamm v. SC Public Service Com'n, 439 SE 2d 852 (1994), (ii) Ganymede's pending Motion for Protective Order (iii) Ganymede's timely filed Objections/Responses to Discovery Requests and (iv) Ganymede's pending Motion for Clarification, this Commission should find that the Utility's Motion to Compel is untimely and without merit. This Commission should further find that Ganymede's two Motions, Motion for Clarification and Motion for Protective Order, which predate the Utility's Motion must be heard and decided, prior to the Utility's Motion to Compel, in that this Commission's granting the relief sought in either Motion will moot the Utility's Motion. To the extent this Commission hears the Utility's improper Motion to Compel, it should deny the same, consistent with Hamm v. SC Public Service Com'n, 439 SE 2d 852 (1994).

[Signature Page Follows]

² This provision gives this Commission broad supervisory authority, granted by the South Carolina General Assembly and described as being, "Full Power and Authority", the ability to amend, modify, change or annul the Contract between Ganymede and Utility.

Respectfully Submitted,

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February 19, 2020
Irmo, South Carolina